

CHARLES R. WALKEMEYER

IBLA 87-204

Decided May 1, 1989

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting application for reinstatement of homestead entry.  
CA 19366.

Affirmed as modified.

1. Homesteads (Ordinary): Lands Subject to

BLM properly rejects an application for a homestead entry in a national forest because the Secretary of the Interior has no authority for such disposition.

APPEARANCE: Charles R. Walkemeyer, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Charles R. Walkemeyer has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated November 14, 1986, rejecting his application for reinstatement of homestead entry SAC 09071, which was originally filed by James L. Stinnett on December 9, 1915, for 15.3 acres in sec. 20, T. 25 N., R. 7 E., Mount Diablo Meridian, Plumas County, California, now located in Plumas National Forest.

Stinnett's entry was filed under R.S. 2289, Act of March 3, 1891, ch. 561, | 5, 26 Stat. 1097, 43 U.S.C. | 161 (1982) (repealed effective Oct. 21, 1976, by P.L. 94-579, | 702, 90 Stat. 2787, except as to Alaska). On April 28, 1916, Stinnett filed a relinquishment of his entry, stating that he was "not able financially to go onto" the homestead, and the entry was cancelled.

On June 6, 1986, appellant Walkemeyer filed an application for reinstatement of Stinnett's entry based on the Act of March 3, 1911, ch. 225, | 1, 36 Stat. 1084, 16 U.S.C. | 511 (1982). That provision reads:

| 511. Reinstatement of entries canceled or relinquished.

All homestead entries which have been canceled or relinquished, or are invalid solely because of the erroneous allowance of such entries after the withdrawal of lands for national forest

purposes, may be reinstated or allowed to remain intact, but in the case of entries canceled prior to March 3, 1911 applications for reinstatement must have been filed in the proper local land office prior to July 1, 1912.

BLM rejected appellant's application because "[t]he original homestead entryman did not relinquish his homestead entry because of erroneous allowance after the withdrawal for national forest purposes," but because he was financially unable to proceed.

On appeal, appellant argues the statute authorizes reinstatement of an entry if it has been canceled or relinquished or if it was invalid solely because of the erroneous allowance of the entry on lands after they had been withdrawn for national forest purposes. He asks whether the homestead is still valid or is no longer of record because it was canceled.

[1] Stinnett's entry was cancelled and is no longer valid. In effect, appellant seeks to initiate another entry rather than to reinstate Stinnett's entry. In Thomas W. McCloskey (On Rehearing), 47 L.D. 45, 46 (1919), the First Assistant Secretary noted that the Act of March 3, 1911, would not be applicable to an application to make entry.

The Act of June 11, 1906, 34 Stat. 233, that authorized homestead entries on lands within a national forest was repealed by section 4 of the Act of October 23, 1962, P.L. 87-869, 76 Stat. 1157. There is now no statutory provision for allowing homestead entries within a national forest. Gustavus A. Bremer, 21 IBLA 15 (1975); August H. Snyder, 1 IBLA 131 (1970). As we noted in Bremer, to establish a right to public land an applicant must file an appropriate application under an applicable public land law. Even if an application for a homestead entry could be filed under the Act of March 3, 1911, there are no lands listed for homestead entry in the national forests. Snyder, *supra* at 132 n.1. Because there is no current authority to allow a homestead entry in a national forest, BLM properly rejected an application for a homestead even though the applicant alleged an application was once accepted but not perfected. Lee C. Robinson, A-30196 (Apr. 13, 1964). For the same reason BLM properly rejected appellant's application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Will A. Irwin  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge